

## **CORRECTED OPINION**

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

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Rockville, Maryland 20850  
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**Case No. S-2462**

### **PETITION OF VICTORY HOUSING, INC.**

#### **CORRECTED - OPINION OF THE BOARD**

(Hearing held April 4, 2001)

***(Effective date of Corrected Opinion: January 15, 2002)***

***Clarification Shown in BOLD ITALIC***

Case No. S-2462 is a petition pursuant to Section 59-G-2.35 of the Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended) for a special exception to construct housing for the elderly at 9440 Newbridge Drive, Potomac, Maryland.

**Decision of the Board:** Special exception GRANTED, subject to conditions enumerated below.

A public hearing was held on Wednesday, April 4, 2001, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Appearing on behalf of the Petitioner were Jody S. Kline, Attorney for Victory Housing, Inc.; James Brown, President, Victory Housing, Inc.; Alfred Blumberg, Land Planner; Jeffrey Lewis, Professional Engineer; Rick Jolson, Architect; Leonard Bogorad, Need Analyst; and Lee Cunningham, Land Use and Transportation Planner.

Also participating in the proceedings were Norman Knopf, Attorney for the Potomac Citizens Association (the "Association"); Barbara Padden, Representative of the Association; Todd Brown, Attorney for The Harbor School; and Edgar Czarra, property owner, located at 9451 Newbridge Drive, Potomac.

Martin Klauber, the People's Counsel for Montgomery County, Maryland, also participated in the proceedings. Mr. Klauber recommended that the Board approve this requested special exception, subject to the conditions enumerated below.

There was no opposition to the requested special exception.

**EVIDENCE PRESENTED TO THE BOARD:**

1. The subject property is located at 9440 Newbridge Drive, Potomac, Maryland. The property is currently owned by Montgomery County, Maryland; however, the County has entered into a contract with Victory Housing, Inc. (Exhibit 7) under which Victory Housing will purchase the property for the express purpose of developing an affordable senior housing community on the site. The site, comprising 16 acres of RE-2/TDR zoned land, is located on the north side of Newbridge Drive, approximately 1,150 feet east of its intersection with River Road. Access to the property will be provided from Newbridge Drive, a public street. The property has approximately 640 feet of frontage on Newbridge Drive and 365 feet of frontage on Spicewood Lane. The property is currently undeveloped and is heavily wooded, with a rolling terrain and moderate slopes. The site's environmental features include a 100-year floodplain and a stream buffer.

2. The area surrounding the subject site is zoned RE-2 and is developed with low-density residential uses. Across Newbridge Drive and south of the site, the property is zoned RE-2 and contains the vacant building that once housed the German School, a private educational institution. A special exception (S-2457, Petition of The Harbor School) was filed and was pending before the Board of Appeals at the time of the hearing for a private educational institutional use on the former German School site. Other approved special exceptions in the area include: SE-391, a private riding stable for two horses, approved 12/10/70; BA-1814, a private educational institution (German School), approved, 8/31/65 (now abandoned); and BA-2684, to relocate the approved German School to another site, approved 12/9/69.

3. The applicant proposes to construct a 72-unit, independent living, elderly housing facility, to be identified as "Victory Terrace." The proposed use will have a building footprint of 23,000 square feet, with a total gross square footage of approximately 83,000 square feet. The proposed building will measure ***in height not more than 38 feet on the side facing Newbridge Drive and not more than 48 feet on the rear or back side of the building. (Exhibit 54(c))*** The front of the building will consist of three stories and the back of the building will consist of four stories. The building will comprise 55 one-bedroom apartments and 17 two-bedroom apartments, with one of the 72 units designated for the resident manager. Each apartment will have a full kitchen, including a dishwasher and refrigerator, and will be furnished with wall-to-wall carpeting and emergency pull-chords. Common areas in the facility will include TV lounges, beauty salon/barbershop, hobby room, computer room, wellness center, library, laundry rooms, and administrative offices. Exterior common areas will include an outdoor courtyard, walking trails, and a "victory garden."

4. A management agency will be retained to oversee the operation of the facility. The management agency will organize activities for the residents including art classes, bridge, book clubs, computer classes, exercise classes, and shopping excursions. Van service will be available for residents needing transportation for shopping and other purposes, when demand justifies such service.

5. Jim Brown, President of Victory Housing, testified that rents for at least one-half of the apartments will be set at levels of 60% of the area's median income, or less. Thirty percent of the apartments will be available at the County's Moderately Priced Dwelling Unit (MPDU) pricing range. All remaining apartments will be set at market rates. Mr. Brown emphasized that no retail operations will be undertaken at the proposed site.

6. Mr. Brown also stated that, as the residents age in place, an evening meal service for an additional fee will be considered and may be implemented to accommodate the needs and wishes of the residents.

7. Staff employed at the facility would include a community director, an assistant community director, a maintenance manager, and a part-time housekeeper. If, and when, Victory Terrace begins to provide meal service, an additional four to six kitchen staff will be employed and will generally work between the hours of 3:00 p.m. and 8:00 p.m. In response to questioning from Martin Klauber, the People's Counsel, Mr. Brown testified that the applicant did not anticipate employing more than a total of 12 employees, if and when the meal service became operable.

8. Other persons or auxiliary staff who might periodically visit the proposed facility include health care professionals whose services are contracted for directly by some of the residents; a beautician/hairdresser/barber who might visit the facility once or twice per week; activity leaders who will visit the facility to organize residents in recreational or educational activities; and professional landscape maintenance workers who will make regular visits to the property as dictated by the season.

9. The proposed facility will house residents whose average age at the time of entry will be in the early 70's. The resident population will vary from 71 to 90 persons, depending on the actual occupancy of the various units. .

10. The site, situated in the "South Central" parking area of the County, is required to provide 54 parking spaces for the use as an elderly housing facility. Alfred Blumberg, testifying on behalf of Victory Housing as an expert in land use planning, stated that the applicant proposes to provide 57 parking spaces, thereby exceeding the minimum requirement by three spaces.

11. The site is located in the Potomac Subregion area and is governed by the 1980 Adopted and Approved Potomac Subregion Master Plan. Generally known as the "Bradley Junior High School Site," the property was previously owned by the Board of Education and was intended for use as a junior high school. The property was ultimately transferred to Montgomery County, Maryland as a surplus school site. The Master Plan recommends that if the site is not used for a school, that it be designated as a potential "Public Facility Area." This designation calls for future investigation of the site's suitability for public use, including affordable housing. A September 1982 amendment to the Master Plan designated the site as TDR Receiving Area 37 and suitable for TDR-1 development. The proposed use, housing for the elderly, is allowed by special exception in the RE-2/TDR Zone.

12. Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) recommended approval of the application based on its opinion that the proposed use comports with the Master Plan (Exhibit 36). Mr. Blumberg testified that the Master Plan designates the proposed site as a "public facility site" and that such a site could include independent, affordable elderly housing. Mr. Blumberg also testified that because of the heavy forest buffer surrounding the property, the proposed use would not be detrimental to the surrounding neighborhood with respect to noise or lighting glare. Moreover, Mr. Blumberg stated that due to the low ratio of building coverage to lot size, the use would be virtually invisible to the surrounding neighborhood and would not adversely affect the character, health, safety, or welfare of the neighborhood.

13. Mr. Brown testified regarding the numerous discussions that Victory Housing has had with representatives of the Association. Mr. Brown stated that a written agreement (Ex. 51) had been reached with the Potomac Citizens Association and that the Association supports this special exception application. Ms. Barbara Padden also testified regarding the written agreement reached by the applicant and the Association and stated her support of the proposed project (Exhibit 51).

14. M-NCPPC Technical Staff found that the special exception application would have no detrimental effect on adjacent intersections and roads and that the proposed use would generate five trips and seven trips during the AM and PM peak hours, respectively (Exhibit 36). For Policy Area Transportation Review, the current FY01 Annual Growth Policy indicates that the Potomac Policy Area has adequate housing staging ceiling capacity available (1,193 units as of February 28, 2001) to accommodate the proposed development. Access to the site is proposed from Newbridge Drive, a primary residential street with 70' of right-of-way in the Master Plan. Staff found the proposed access point from Newbridge Drive to the site, and traffic circulation system depicted on the submitted plan to be adequate (Exhibit 36). Mr. Lee Cunningham, testifying as an expert in transportation planning on behalf of the applicant, stated that the trip generation rate for the proposed use was well within the

standards for housing and related facilities for the elderly, and that the surrounding road network was adequate to handle traffic associated with this special exception.

15. A Natural Resources Inventory (#4-0114) (Exhibit 9) and a Preliminary Forest Conservation Plan (Exhibit 10) have been approved for the site. The applicant has proposed to preserve as contiguous forest 12.12 acres of the 15.76 acres of forest on the property.

16. Mr. Blumberg stated that of the 12.12 acres of forest to be preserved, approximately 10.8 acres of forest would be placed in a Category I Conservation Easement. Mr. Blumberg stated that the applicant's forest conservation proposal preserves nearly three times the amount of forest as is mandated by the forest conservation requirements. He also described the nature of the applicant's reforestation plans for the area traversing the sewer line on the property, **(Exhibits 54(d) [revised Special Exception Site Plan] and 54(e) [Supplemental Clearing Limits: Forest Conservation Plan])** and the additional landscaping and planting that the applicant would undertake on the property (Exhibit 43).

17. The site is located in the Ken Branch tributary of the Cabin John watershed. The Countywide Stream Protection Strategy assesses the Ken Branch tributary as having good stream conditions and fair habitat conditions, labeling it as a Watershed Protection Area. Technical Staff required that the applicant submit a stormwater management concept plan to the Montgomery County Department of Permitting Services for approval (Exhibit 36). Mr. Lewis, testifying as an expert in engineering on behalf of the applicant, stated that the applicant's proposed stormwater management concept would embody a pond on the north end of the site, which would manage the quantity of stormwater flow, and a surface sand filter to contain runoff. Mr. Lewis also testified that the on-site sewer and water systems were adequate for the proposed use and that the use would not adversely impact the health or safety of the surrounding neighborhood.

18. Mr. Blumberg testified that the applicant's proposed building would be located in excess of 400 feet from the nearest surrounding residence and that the building would be located in excess of over 200 feet from all property lines east, south, west, and north (Exhibit 43). Mr. Rick Jolson, testifying on behalf of the applicant as an expert in architecture, stated that the proposed facility would be comprised mainly of brick and stucco, in order to mirror the composition of the homes in the surrounding neighborhood. Mr. Jolson stated that the facility would be built to a scale and height comparable to the surrounding homes.

19. After a discussion with the Board and the People's Counsel, Mr. Blumberg proffered that the applicant would utilize high-pressure, sodium lighting on the property's outdoor light pole fixtures (Exhibit 44 & Exhibit 46). The applicant also assured the

Board that the foot candles under the proposed portico would not exceed 1.5. Mr. Blumberg testified that Victory Housing's minimal level of signage would be integrated into a wall at the Newbridge Drive entrance.

20. The subject property is not recorded by plat of subdivision. The use will require approval of a preliminary plan of subdivision to conform to Chapter 50 of the Montgomery County Code.

21. M-NCPPC Technical Staff found that the proposed modification satisfies the general and specific requirements of the Zoning Ordinance and recommended approval of the request for special exception, subject to the following conditions:

1. The applicant shall be bound by all submitted statements and plans.
2. Approval of Final Forest Conservation Plan prior to release of sediment and erosion control or building permit, as appropriate.
3. Compliance with Department of Permitting Services requirements for stormwater management.
4. Conformance with Chapter 50 (Subdivision Regulations) of the Montgomery County Code.
5. Approval of a final landscape and lighting plan by M-NCPPC Technical Staff prior to issuance of building permits.
6. Applicant to revise the submitted site plan to show the following corrected information: Provided: Building Height - 48 feet; Gross Lot Area: 16.0 acres.

22. The Montgomery County Planning Board adopted the Technical Staff's recommended approval of this special exception, subject to the conditions listed in No. 21 above, with modifications of recommended condition #5 listed in paragraph 21 above, and with the addition of a new condition addressing Section 59-G-2.35(g)(4).

**FINDINGS OF THE BOARD:**

Based on the Petitioner's binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested special exception can be granted.

**Section 59-G-1.2 Conditions for granting.**

"59-G-1.21 Standard for evaluation. A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals ... must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception."

*The Board finds that the inherent adverse characteristics of the proposed housing for the elderly are the size and scale of the proposed building, the amount of impervious surface for driveways and parking areas, and its effects on stormwater management, lighting, and signage. The Board finds that the above-referenced physical and operational characteristics of the proposed use, including personal care services, recreational and educational activities, van service, and the future provision of meal service, are no different than what is normally associated with housing for the elderly facilities. Concerning the requested special exception application, the Board finds that the use has been sited in the middle of the property, retaining the majority of the existing on-site forest and supplementing the forest with landscaping around the building, driveways, and parking area. The Board finds that the Building's design and materials incorporate materials and design elements found on the large residences in the neighborhood. Given the submitted plans, and the applicant's statement of operations and other submitted documentation, the Board does not find any non-inherent effects related to this special exception.*

**Section 59-G-1.21 General Conditions.**

"(a) A special exception may be granted when the Board ... finds from a preponderance of the evidence of record that the proposed use:

"(1) Is a permissible special exception in the zone."

*The Board finds that the proposed housing for the elderly is allowed in the RE-2/TDR Zone, in accordance with Section 59-G-1.21(a)(1) of the Zoning Ordinance.*

"(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted."

*The Board finds that the proposed application satisfies the standards and requirements for housing for the elderly, as discussed below, in accordance with Section 59-G-1.21(a)(2) of the Zoning Ordinance.*

"(3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny the special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting of a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency."

*The Board finds that the subject property is covered by the 1980 Potomac Subregion Master Plan. The Master Plan recommends the existing RE-2/TDR Zone for the property and housing for the elderly is allowed by special exception in that zone, in accordance with Section 59-G-1.21(a)(3) of the Zoning Ordinance.*

"(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses."

*The Board finds that the proposed use will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of the proposed new structure, intensity and character of activity, traffic and parking conditions, and number of similar uses, in accordance with Section 59-G-1.21(a)(4) of the Zoning Ordinance.*



"(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone."

*The Board finds that the proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, in accordance with Section 59-G-1.21(a)(5) of the Zoning Ordinance. The Board concludes that the existing tree stand and mature vegetation surrounding the applicant's property line adequately serves to buffer the proposed modification from the surrounding residential neighborhood.*

"(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone."

*The Board finds that the proposed use will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity in accordance with Section 59-G-1.21(a)(6) of the Zoning Ordinance.*

"(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area."

*The Board finds that the proposed use will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature, in accordance with Section 59-G-1.21(a)(7) of the Zoning Ordinance.*

"(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone."

*The Board finds that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, in accordance with Section 59-G-1.21(a)(8) of the Zoning Ordinance.*

"(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities."

*The Board finds that the proposed use will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities, in accordance with Section 59-G-1.21(a)(9) of the Zoning Ordinance. The Board finds that the sewer and water capacity for the proposed modification is sufficient and finds that the elderly care facility will be adequately served by existing public utilities.*

"(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception."

*The Board finds that at the time of subdivision, the adequacy of public facilities will be addressed by the Planning Board.*

"(ii) With regard to findings related to public roads, the Board ... must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic."

*The Board finds that the adequacy of public roads with respect to vehicular and pedestrian traffic will be addressed by the Planning Board at the time of subdivision.*

**Section 59-G-2.35 Housing and related facilities for elderly or handicapped persons.**

"A special exception may be granted for housing and related facilities for elderly or handicapped persons, subject to the following provisions:

(a) Prerequisites for granting:

- (1) A minimum of 10 percent of the dwelling units is permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs in accord with Executive regulations. Income levels are defined as follows:

- (A) "MPDU income" is the income limit determined by the Department of Housing and Community Affairs in the administration of the MPDU program, as prescribed by Chapter 25A of the County Code.
- (B) "Low income" is income at or below 60 percent of the area median income adjusted for household size.
- (C) "Very low income" is income at or below 50 percent of the area median income adjusted for household size.
- (D) "Area median income" is as determined annually by the U.S. Department of Housing and Urban Development."

*The Board finds that the applicant's proposal to provide 50 percent, or 36 units, as affordable housing units meets the definition for "low income."*

- "(2) Taking into account the size of the units, the services to be provided, the income levels to be served, and the location of the site, there is a need for such use because:
  - (A) There is an insufficient amount of such housing and facilities to serve the existing population of the County, and
  - (B) The need for such housing and facilities cannot be met by development in accordance with development standards not requiring a special exception.

In making this finding, the Board must consider demographic data, including projections and analyses provided by the Planning Board and County government, as well as evidence provided by parties to the case. Such data will be evaluated by the technical staff or the Planning Board."

*In accordance with Section 59-G-2.35(a)(2), the Board finds that there is a need for the applicant's proposed use. The M-NCPPC Research Division staff has reviewed the applicant's need study exhibited (Ex. No. 12) in the context of M-NCPPC staff's report entitled, "Need for Elderly Housing in the Potomac Subregion", prepared for the recently published Potomac Subregion Master Plan Staff Draft (Exhibit No. 36). Both the applicant's study and the staff study of senior housing in Potomac show the need for moderate numbers of additional units in Potomac. The applicant estimates current unmet demand in their market area of 535 market rate units and 183 affordable units. The applicant's market area comprises most of the Potomac Subregion, Bethesda-Chevy Chase, and parts of Rockville and Kensington. Staff estimates the total need at 450 units for the Potomac Subregion, but expects that only 100 to 150 units will be located within the Subregion due to limited land with public sewer and water service. Both estimates easily accommodate the proposed 72 units.*

*The applicant's study demonstrates a Countywide need for this use. The situation has changed since the staff study included in the master plan was completed. The number of proposed and approved units has declined by 271. The newer forecast estimates an additional 4,515 persons aged 65 and over more than the 1997 data used for the study. Consequently, the Board finds that there is a near-term need for a modest number of units, perhaps several hundred, in addition to approved units in the pipeline that appear likely to proceed. The need is especially great for units to serve moderate and middle-income households. Because senior housing is more labor intensive than other housing, the market has trouble providing moderately priced units even though the largest number of households fall within this income range. The Board finds that the applicant has adequately demonstrated a finding of need for the proposed use.*

"(3) The proposed use will not produce adverse effects on the use or development of the surrounding area because of noise, traffic, type of physical activity or any other reason."

*The Board finds that with conditions, the proposed use will not produce adverse effects because of noise, traffic, type of physical activity, or any other reason.*

"(4) The site of the proposed facility has adequate accessibility to public transportation, medical services, shopping areas, recreational and other community services frequently desired by elderly or handicapped persons."

*The Board finds that the site has adequate accessibility to the nearby shopping areas, recreational, and community facilities. Furthermore, the applicant proposed to provide a van service for residents needing to use these facilities when demand justifies such service.*

"(5) The site or the proposed facility is reasonably well protected from excessive noise, air pollution and other harmful physical influences."

*The Board finds that the proposed use will be situated in the middle of the subject property and is surrounded by existing forest and, as a result, will be protected from excessive noise, air pollution, and other harmful physical influences.*

"(b) Occupancy of a dwelling unit is restricted to the following:

- (1) An elderly or handicapped person, as defined in Section 59-A-2.1;
- (2) The spouse of an elderly or handicapped resident, regardless of age or handicap;
- (3) A resident care-giver, if needed to assist an elderly or handicapped resident; or

- (4) In a development designed primarily for handicapped rather than elderly persons, the parent, daughter, son, sister or brother of a handicapped resident, regardless of age or handicap.

Additional occupancy provisions are:

- (5) Age restrictions must comply with at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, and subsequent amendments thereto. (In that Act, "familial status" refers to discrimination against families with children.)
- (6) Resident staff necessary for operation of the facility are also allowed to live on site."

*The Board finds that based on the evidence submitted by the applicant, the residents of this use will meet the definition for elderly persons contained in the Zoning Ordinance.*

"(c) Development standards, other than density, in residential zones where allowed by special exception, except R-30, R-20, R-10, and R-H:

- (1) Minimum net lot area: 1 1/2 acres, but not less than the minimum net lot area specified by the relevant zone."

*The Board finds that this application satisfies the requirements of sub-section (c)(1), as the site is approximately 16 acres and the minimum lot size in the RE-2 Zone is 2 acres.*

"(2) Minimum setbacks:

- (A) From street: 50 feet. Except for an access driveway, this must be maintained as green area. However, if development does not exceed the height limit of the applicable one-family zone, the minimum setback specified in the zone applies."

*The Board finds that the subject property is deemed a through lot as it has frontage on two streets. As shown on the submitted site plan (Ex. No. 43), the use will be setback 373 feet from Newbridge Drive and 453 feet from Spicewood Lane, which meets the minimum 50-foot setback requirement.*

"(B) From side and rear lot lines: 25 feet or as specified by the relevant zone, whichever is greater."

*The Board finds that the proposed use meets the setback requirements of this sub-section. In the RE-2 Zone, the side and rear lot line setbacks are 17 and 35 feet, respectively. For the proposed use, the building will be setback 276 and 353 feet from the side lot lines. However, the proposed building will be setback approximately 440 feet from the nearest residence on the eastern lot line and approximately 420 feet from the nearest residence on the western lot line.*

"(3) Maximum building height: 20 feet, provided the following height-to-setback ratio is achieved for heights above the maximum prescribed by the applicable zone:

(A) Rural Cluster, Rural, RE-2, REC, RE-1, R-200, R-150 Zones: One foot of height is allowed for each one foot of setback from the side and rear lot lines, up to a height of 50 feet. Between 50 and 120 feet of height, one additional foot of height is allowed for each additional 2 feet of setback beyond the minimum side and rear yard setbacks prescribed by paragraph (2)(b), above."

*The Board finds that the proposed use meets the height requirements of this sub-section. The height for the proposed elderly housing building is **to be no greater than 38 feet (as measured in accordance with the Zoning Ordinance although the building will appeal taller from the four story rear elevation).** (Exhibit 54(c)) The height limit in the RE-2 Zone is 50 feet.*

"(4) Maximum lot coverage: As specified by the relevant zone, provided the coverage complies with the setback requirements of paragraphs (c)(2) and (3) of this section.

(d) Development standards, other than density, in the R-30, R-20, R-10, and R-H Zones are as specified by the relevant zone in Section 59-C-2.41, except that lot coverage and building setbacks may be modified as specified in Section 59-C-2.42 concerning standards for moderately priced dwelling units."

*The Board finds that lot coverage in the RE-2 Zone is 25%, and the site plan proposes lot coverage of 3.3%.*

"(e) Maximum density:

- (1) In the Rural, Rural Cluster, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-40, RT.-6, RT.-8, RT.-10, and RT.-12.5 Zones, the number of units is governed by the overall size of the building as determined in accordance with the combined height and setback standards specified by paragraphs (c)(2) and (3) of this section. Minimum unit size is governed by the minimum space and other relevant standards of Chapter 26, "Housing Standards," of the Montgomery County Code, as amended."

*The Board finds that, based on the applicant's testimony, the units will conform to the minimum standards for unit sizes as specified in Chapter 26 of the County Code.*

"(f) Parking and Loading:

- (1) Parking must be provided in accordance with the provisions Section 59-E-3.7, "Schedule of Requirements." The Board of Appeals must require adequate scheduling and long-term continuation of any services for which parking credits are granted in accordance with Section 59-E-3.33(b) and may require additional parking for any facilities and services provided in accordance with paragraph (g)(2) of this section, if they serve nonresident elderly or handicapped persons. When considering the need for additional parking the Board may consider the availability of nearby public or private parking facilities."

*The Board finds that this proposed use will require 54 parking spaces, based on 55 one- bedroom units and 17 two-bedroom units. The applicant is proposing 36 units, which will be designated as affordable units in the proposed building. Under Section 59-E-3.33 of the Zoning Ordinance, the applicant is allowed a 20% reduction in required parking spaces for the provision of affordable units. After this reduction is taken, the proposed use would require 54 spaces. The applicant is providing 57 parking spaces for this use, thus satisfying this requirement.*

- "(2) Loading areas to serve any facilities, such as kitchens or retail stores, requiring truck deliveries must be screened so as not to be visible from any lot line abutting or confronting land in a one-family residential zone."

*The Board finds that the loading area for the proposed use is sited approximately 385 feet from the eastern lot line. The applicant has submitted a conceptual landscape and lighting plan for the site (Ex. No. 8). This plan shows landscaping around the proposed loading and adjacent parking areas. The Board finds the submitted landscaping and lighting plan adequately addresses screening around these areas and*

*employs the extensive existing forest to adequately screen this area from the nearby residential uses.*

"(g) Additional provisions:

- (1) One or more of the following ancillary facilities and services may be included to serve the residents and possible nonresident elderly or handicapped persons. The Board may restrict the availability of such services to nonresidents and specify the manner in which this is publicized.
  - (A) Provision for on-site meal service;
  - (B) Medical or therapy facilities or space for mobile medical or therapy services;
  - (C) Nursing care;
  - (D) Personal care services;
  - (E) Day care for elderly or handicapped persons;
  - (F) On-site facilities for recreation, hobbies or similar activities; or
  - (G) Transportation to such off-site facilities and services as shopping, religious, community or recreational facilities, or medical services."

*The Board finds that the proposed use will satisfy the requirements of this subsection. The applicant's statement of justification lists several ancillary services, such as, on-site recreational and educational activities, personal care services, and transportation to off-site services that will be available to residents of the proposed use.*

"(2) Retail facilities may be included to serve exclusively the residents of the building."

*The Board finds that there are no retail facilities proposed under this application.*

"(3) The application must contain a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical, and public services within a one mile radius of the proposed facility."

*The Board finds that the applicant has submitted the required map.*

"(4) Construction is subject to all applicable federal, state, and County licenses or certificates."



*The Board finds that licenses and certificates must to be obtained by the applicant prior to the issuance of building permits.*

Therefore, based on the foregoing, the Board **GRANTS** this special exception subject to the following conditions:

1. The applicant is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in this opinion. ***In particular, the Petitioner will construct and operate the proposed facility in accordance with the elevations (Exhibit 54 (c)), site plan (Exhibit 54(d)), lighting plan (Exhibits 44 & 46), and "Supplemental Clearing Limits: Preliminary Forest Plan." (Exhibit 54(e)).***
2. Approval of Final Forest Conservation Plan prior to release of sediment and erosion control or building permit.
3. Compliance with Department of Permitting Services requirements for stormwater management.
4. Conformance with Chapter 50 (Subdivision Regulations) of the Montgomery County Code.
5. Prior to issuance of a building permit, Applicant to submit a final landscape and lighting plan consistent with opinion for inclusion in the Board's file after review and comment on such plan by Technical Staff.
6. Applicant to provide van service to nearby medical services, shopping areas, recreational and community services.
7. Applicant to obtain necessary licenses and certificates to operate the proposed facility prior to commencing operation.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Board member Mindy Pittell Hurwitz was necessarily absent and did not participate in the Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 15<sup>th</sup> day of January, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. S-2462**

**PETITION OF VICTORY HOUSING, INC.**

RESOLUTION TO GRANT MODIFICATION UPON RECONSIDERATION

(Resolution Adopted October 16, 2001)

(Effective Date of Resolution: January 15<sup>th</sup> 2002)

On September 21, 2001, the Board of Appeals received a letter from Norman G. Knopf, Esquire. Mr. Knopf's September 21, 2001 letter encloses a Joint Motion for Reconsideration/Modification and Request for Additional Time to Supplement Motion. The Motion, signed by Mr. Knopf, and Jody S. Kline, Esquire, requests reconsideration to allow the Board to modify its Opinion to make corrections and clarifications to exhibits in the record and to the Opinion itself.

On October 11, 2001, the Board received a joint letter from Mr. Knopf and Mr. Kline enclosing four corrected exhibits, which they request be entered into the record and also requesting that the Board re-issue its Opinion to reflect references to the new exhibits and to provide additional clarification.

The Board of Appeals considered these requests at its worksession on October 16, 2001. After careful consideration and review of the record and proposed corrections, the Board finds that the request for Reconsideration and Modification can be **granted**. Therefore,

BE IT RESOLVED BY THE BOARD OF APPEALS for Montgomery County, Maryland that the record in Case No. S-2462 is re-opened to receive Norman G. Knopf, Esquire's September 21, 2001 letter with the enclosed Joint Motion for Reconsideration/Modification and Request for Additional Time to Supplement Motion; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record is also opened to receive Mr. Knopf and Mr. Kline's joint letter

of October 11, 2001; with revised exhibits and proposed corrections to the Board's Opinion, and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Board will re-issue the opinion in Case No. S-2462, to reflect the changes requested in the joint letter of October 11, 2001.

On a motion by Louise L. Mayer, seconded by Allison I. Fultz, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the foregoing Resolution. Board member Donna L. Barron was necessarily absent and did not participate in the Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 15<sup>th</sup> day of January, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections

and/or relief desired. In the event that such request is received, the Board shall suspend its decision.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedures.

